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COMMISSION ON HUMAN RIGHTS
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Fifty-third session
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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS, INCLUDING POLICIES OF RACIAL DISCRIMINATION AND SEGREGATION, IN ALL COUNTRIES, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES: REPORT OF THE SUB-COMMISSION UNDER COMMISSION ON HUMAN RIGHTS RESOLUTION 8 (XXIII)

Note by the High Commissioner for Human Rights transmitting the report of the International Commission of Inquiry for Togo

GE.01-11525 (E)

1. At its fifty-sixth session, the attention of the Commission on Human Rights was drawn, under agenda item 9, to the statement delivered on 20 August 1999 by the Chairperson of the fifty-first session of the Sub-Commission on the Promotion and Protection of Human Rights concerning the situation of human rights in Togo. To give effect to that statement, the International Commission of Inquiry for Togo was established on 7 June 2000, under the auspices of the United Nations and the Organization of African Unity, at the request of the Government of Togo. It should be recalled that, at the Sub-Commission's request, a note by the Secretary-General (E/CN.4/Sub.2/2000/8) on the establishment of the International Commission of Inquiry for Togo was circulated at its fifty-second session, under the agenda item relating to the question of the violation of human rights and fundamental freedoms in all countries.

2. On 26 December 2000, the International Commission of Inquiry transmitted its report to the Secretary-General of the United Nations and the Secretary-General of the Organization of African Unity. Referring to paragraphs 74 and 75 of the report, the two Secretaries-General requested the High Commissioner to bring the report to the attention of the Commission on Human Rights at its fifty-seventh session. The Secretaries-General requested that the comments of the Government of Togo and Amnesty International concerning the report should also be made available to the Commission on Human Rights (see addenda 1 and 2 to this document).

Preliminary distribution

REPORT OF THE INTERNATIONAL COMMISSION OF INQUIRY FOR TOGO

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1. Statement by the Chairperson of the Sub-Commission on the Promotion and Protection of Human Rights

2. Rules of procedure of the Commission

I. INTRODUCTION

A. Mandate

1. On 7 June 2000, Mr. Kofi Annan and Mr. Salim A. Salim, Secretary-General of the United Nations and Secretary-General of the Organization of African Unity respectively, issued a joint press release concerning the establishment, under the auspices of both organizations, of an international commission of inquiry to verify the truth of allegations contained in an Amnesty International report of 5 May 1999, that hundreds of extrajudicial executions had taken place in Togo during 1998, and to report thereon to the two Secretaries-General.

B. Composition

2. The International Commission of Inquiry for Togo (hereinafter "the Commission") is composed of three international experts appointed through mutual agreement by the Secretaries-General of the United Nations and the Organization of African Unity: Mr. Mahamat Hassan Abakar (Chad), Chairman, Mr. Paulo Sergio Pinheiro (Brazil), member, and Mr. Issaka Souna (Niger), member.

C. Methods of work

3. The Commission conducted its inquiry in conformity with relevant international norms, in particular the international human rights instruments in force. The Commission conducted a field mission to Togo and neighbouring countries for the purpose of verifying the allegations in question. In that context, it called on institutions and individuals with a view to collecting the testimony, information and documents needed for the discharge of its mandate. Before leaving on mission, on 12 September 2000 the Commission distributed, through the United Nations offices in Togo, Benin and Ghana, a public information note on its mandate and methods of work, questions relating to the protection of witnesses and any other information sources, and the undertaking of the Government of Togo to cooperate with it. The information note also called on persons wishing to provide the Commission with information, testimony, recommendations or opinions to do so, either orally (interview or hearing by the Commission), or in writing, or by any other means they deemed to be appropriate, adequate and safe. The Commission indicated that such information might be communicated to it directly during its field inquiries, in Togo or neighbouring countries or any other countries it might visit, or to its secretariat at the Office of the United Nations High Commissioner for Human Rights, Palais Wilson, Geneva. A copy of the Commission's rules of procedure was attached to the public information note.

4. The Commission accordingly heard the representatives of the Governments of Togo and Benin, the heads and members of several foreign diplomatic missions accredited in both countries, representatives of international and national human rights organizations, journalists and more than 60 witnesses, in both Geneva and the field. The Commission was also given numerous documents, photographs and pieces of evidence by the persons and institutions concerned.

5. The Commission heard the representatives of Amnesty International on two occasions, at its first and second meetings, held in Geneva in August and September 2000. On both occasions, it also held working meetings with representatives of the Government of Togo. In the field, the Commission held several working meetings with the National Commission set up by the Government of Togo to serve as liaison body. Exchanges between the two Commissions made it possible to clarify certain problems which arose during the field inquiry.

D. Meetings of the Commission in Geneva

6. The Commission began its work on 31 July, and held three meetings in Geneva.

7. The Commission held its first meeting from 31 July to 4 August 2000. It adopted its rules of procedure at that meeting. The rules of procedure contain information relating to its mandate; the solemn declaration made by its members; their immunities and privileges; the relevant international norms; confidentiality of information and protection of witnesses; cooperation with the United Nations, the Organization of African Unity and the Government of Togo; meetings, powers of the Chairman and decisions; the Commission's secretariat and the drafting of its report (see annex 2). During its first meeting, the Commission held exchanges of views with several organizations and with permanent missions to the United Nations Office at Geneva. It heard the delegations of the Government of Togo and Amnesty International.

8. The Commission held its second meeting in Geneva from 18 to 22 September 2000, with a view to preparing its field mission. It took that opportunity to meet with representatives of several bodies and organizations, such as Amnesty International, the International Committee of the Red Cross and the Office of the United Nations High Commissioner for Refugees. It also held a comprehensive dialogue with the delegation of Togo, relating especially to prior conditions for the field mission. The Commission took advantage of its stay in Geneva, which was extended to 11 November 2000 pending a satisfactory response from the Government of Togo to its requests, to settle administrative and logistical problems in abeyance.

9. The Commission held its third meeting in Geneva from 15 to 22 December 2000. At that meeting it finalized and adopted this report, which was drafted following a five-week field mission to Togo and neighbouring countries.

E. Mission to Togo and neighbouring countries

10. The Commission went first to Togo, where it conducted a first visit from 11 to 19 November. It then went to Benin, essentially Cotonou (from 19 to 24 November 2000) and the Mono region on the Togolese border (24 November-2 December 2000), and to Ghana, in the Volta region on the Togolese border (2-4 December 2000). The Commission ended its mission with a second visit to Togo, from 4 to 12 December 2000.

11. The Commission wishes to thank the authorities of Togo, Benin and Ghana for their cooperation. It also wishes to thank the United Nations offices in Togo, Benin and Ghana for providing it with support for the proper functioning of its field mission. The mission enabled it to collect the data and information necessary for the discharge of its mandate.

II. CONTEXT

12. The event which gave rise to the inquiry was the controversy raised by the Amnesty International report of 5 May 1999 on the situation of human rights in Togo. In response to the allegations contained on page 26 of the report, the Government of Togo proposed that an independent international mission of inquiry should be established to verify the truth of the allegations; the proposal was endorsed by the Sub-Commission on the Promotion and Protection of Human Rights and implemented jointly by the United Nations and Organization of African Unity.

A. Allegations contained in the Amnesty International report

13. On page 26 of its report of 5 May 1999, entitled "Togo, Rule of Terror", Amnesty International stated the following:

> "In June 1998, during the Presidential election campaign, and after the results were announced, hundreds of people, including members of the military, were extrajudicially executed. Bodies were retrieved from the beaches of Togo and Benin and corpses were seen at sea for at least four days around Benin. During its investigative visit, the Amnesty International delegation was able to question numerous individuals, including Beninese and Togolese fishermen, as well as Togolese farm workers who were working in the fields. Those questioned all told of unusual movements of planes and helicopters sometimes flying at very low altitude out to sea. Former soldiers, members of the paracommando regiment, who had sought refuge in Benin, recognized the characteristic sound of Buffalo aircraft. Others questioned also indicated that bodies had been recovered on the beaches, shortly after planes had passed over. One of the fishermen told the following story: 'Eight kilometres from the beach at Ague [in Benin], hundreds of bodies were floating out at sea'; other witnesses confirmed that bodies had been seen for three days at that same place. Another fisherman had filled in the details: 'When I was taking in my nets, I found a corpse among the fish; some corpses were shackled and others were wearing uniforms'. Other fishermen, particularly at Grandpopo in Benin, gave us the same information and specified that the victims' bodies had bullet wounds and that some soldiers were also shackled."

B. Reactions of the Government of Togo

14. The Government of Togo rejected the Amnesty International report, which it called a text "rife with gross fabrications, manipulations and false testimony". It then brought judicial proceedings against Mr. Pierre Sané, Secretary-General of Amnesty International, and against several individuals suspected of having cooperated in the Amnesty International inquiry, for "offence against honour, dissemination of false information, incitement to revolt, offence against national security, complicity to commit an offence against honour, complicity to disseminate false information, complicity to incite to revolt and complicity to commit an offence against national security".

15. The Government of Togo also published a white paper on the allegations contained in the Amnesty International report, which it refuted as follows:

> "Concerning the hundreds of bodies
>
> [...]
>
> With regard to the events cited, the Government of Togo does not acknowledge, in any way whatsoever, such an obvious lie, which does Amnesty International no credit. Does Amnesty International consider the fact that the Government of Togo possesses a Buffalo aircraft, helicopters and shackles to be scientific evidence excluding all doubt? For Amnesty International's information, during the period mentioned in the report, i.e. the June 1998 presidential elections, the Buffalo aircraft in question was not operational. Moreover, how can "executions of hundreds of persons" take place in so tiny a country as Togo without being widely publicized in the national media and the international media present in the country, particularly in the capital, when the accusations of a mere journalist raise such an uproar? How can hundreds of persons be executed without even one of the alleged victims' families expressing its grief, without hearses filling the country's streets? How does Amnesty International explain the fact that an event such as hundreds of bodies washing up on the beaches of Benin never drew a reaction by either the authorities of Benin or the wide range of press organs freely operating in the country? Finally, how does it explain the fact that no diplomatic mission was informed of the hundreds of bodies that washed up on our beaches? Can Amnesty International perform the magic feat of explaining to the Government what happened to those hundreds of bodies, when, where and how they were buried?"

16. Finally, the Government of Togo proposed that an international commission of inquiry should be established to elucidate the controversy raised by the allegations that several hundred people had been victims of extrajudicial executions in Togo following the 1998 elections, and that their bodies had been found by fishermen on the beaches of Togo and Benin and at sea off the Benin coast.

17. On leaving Lomé, the Commission received from the Government of Togo a series of four letters attributed to Mr. Gilchrist Olympio, in support of its conviction that Mr. Olympio and Mr. Pierre Sané had organized a "plot" to destabilize the Togolese Government. The Commission transmitted the letters to the Secretary-General of the Union des forces de changement (UFC) in Lomé, and to Amnesty International, on returning to Geneva. Before finalizing this report, the Commission was informed by the President and Secretary-General of UFC and by Amnesty International that they rejected those allegations as groundless.

C. Sub-Commission on the Promotion and Protection of Human Rights

18. In the context of the Sub-Commission's consideration of the situation of human rights in Togo, its Chairperson made a statement on its behalf, dated 20 August 1999, in which he took note of the proposal of the Government of Togo concerning the establishment of an international commission of inquiry to elucidate the controversy between Amnesty International and itself.

He recommended that the Secretaries-General of the United Nations and Organization of African Unity help set up the commission and provide it with all the assistance it needed to discharge its mandate. He also asked the Government of Togo to cooperate fully with the Commission in order to ensure the proper conduct of the inquiry (see annex 1).

D. Joint action by the United Nations and the Organization of African Unity

19. Pursuant to the proposal of the Government of Togo and in accordance with the statement by the Chairperson of the Sub-Commission, the two Secretaries-General proceeded, as mentioned earlier, to set up the International Commission of Inquiry for Togo. Assistance was provided from the outset by the competent body of each organization, i.e. the United Nations High Commissioner for Human Rights and the Legal Division of the Organization of African Unity, as well as by the permanent mission of the Organization of African Unity to the United Nations Office at Geneva. Subsequently, the Office of the High Commissioner made available to the Commission a support team of four professional staff members, two secretaries and three security officers, who helped it to discharge its mandate in both Geneva and the field.

20. The Commission wishes to thank the Office of the United Nations High Commissioner for Human Rights for providing it with assistance in discharging its mandate, particularly with regard to the provision of a support team. It also wishes to thank the Organization of African Unity for its contribution to its work. It wishes to stress, however, that it alone is responsible for the observations and conclusions contained in this report.

E. Difficulties encountered by the Commission before its departure for the field

21. As mentioned earlier, the Commission was set up on 7 June 2000. It held its first meeting in Geneva from 31 July to 4 August. In accordance with the programme of activities adopted at the meeting, the Commission had planned to travel to Togo on 27 September. It was not able to do so until 11 November, or 1½ months later, which considerably delayed the beginning of its field activities.

22. Some difficulties did indeed arise, leading to a laborious dialogue between the Government of Togo and the Commission.

23. The first difficulties referred to the prior conditions set by the Commission for the conduct of its field mission. These related, on the one hand, to the withdrawal of the complaint lodged by the Togolese authorities against Mr. Pierre Sané and persons suspected of having cooperated with the Amnesty International inquiry and, on the other, to the provision of written guarantees by the Togolese authorities concerning the protection of potential Commission witnesses against any legal proceedings or reprisals subsequent to the field mission. The provision of such guarantees and the suspension of the above-mentioned legal proceedings were a necessary condition for the inquiry to be conducted in a calm, objective and effective manner.

24. Concerning in particular the withdrawal of the proceedings against Mr. Pierre Sané, the Commission also based itself on a letter dated 12 March 2000 from President Gnassingbé Eyadema to the Secretary-General of the United Nations, undertaking to withdraw the proceedings against Mr. Sané, "when the Commission starts its investigations on the field". The Commission reiterated its request in this connection to the Government of Togo at its first meetings in August and September 2000 and in several telephone conversations which its Chairman held with the competent Togolese authorities, in particular the Prime Minister. The Commission also referred to its requirements in letters from its Chairman to the Prime Minister of Togo on 26 and 28 September and 6 October 2000 respectively. The final replies of the Government of Togo to those letters, regarding the withdrawal of the proceedings against Mr. Sané "and company" and the guarantee that no one who testified before the Commission would be prosecuted, did not reach the Commission until 10 and 16 October 2000. On 23 October 2000, the Government of Togo wrote to the Chairman of the Commission reiterating its confidence, as follows:

> "We have taken note of the information relating to a mission of inquiry to Burundi which you conducted during 1994 for Amnesty International.
>
> We wish to express our great satisfaction at receiving this information from you spontaneously, in a gesture which we appreciate and one which denotes great intellectual probity and a strong sense of responsibility on your part.
>
> Given the brief nature of your mission to Burundi and the fact the mandate involved was a specific and very limited one which did not make you a staff member of Amnesty International or in any way subordinate to that body, we would like to confirm that we have no reservations whatsoever to your presence on this Commission."

25. Subsequent difficulties concerned reservations and objections entered by the Government of Togo concerning the composition of the Commission's support team. It insisted that a quota of support team members should be reserved for the Office of the Secretary-General of the Organization of African Unity in order to "reflect the joint nature of the Commission" and also demanded that three people chosen for the support team should be rejected. Concerning the first point, talks held with the Office of the Secretary-General of Organization of African Unity indicated that the absence of its officials on the support team would in no way mar the joint nature of the Commission and, concerning the second point, the Commission was obliged to replace the "rejected" members of the support team in order to avoid its activities coming to a standstill. It did so only for that reason, reiterating the principle that the Commission alone was responsible for choosing its staff.

26. On arriving in Togo, the Commission was given a document attesting to the suspension of proceedings against Mr. Sané and the others, i.e. an order dated 10 November 2000 from the senior judge of the Lomé Court on application of the same date by the Public Prosecutor.

III. FIELD MISSION

27. The field mission enabled the Commission to have access to several information sources, to collect testimony and documents concerning the allegations at issue between the Government of Togo and Amnesty International and to conduct on-site visits.

A. Information sources

28. The information sources basically consisted of testimony. The Commission did, however, have access to documentary sources and was able to conduct on-site visits in certain cases.

1. Documentary sources

29. The documents collected consist essentially of newspapers of the day and of reports by human rights associations and institutions, journalists' trade unions, political parties and the Government of Togo itself. Amnesty International also produced the documentation on which its report was based.

30. The Commission also collected several documents consisting of reports by official entities and non-governmental organizations and by diplomatic missions accredited in Togo and Benin. It also had access to clippings from the private press concerning the matter under inquiry. Of the documents in question, mention should be made of those which were drawn up following a field inquiry into the allegations, namely:

(a) The white paper of the Government of Togo concerning Amnesty International's allegations;

(b) The disputed Amnesty International report of 5 May 1999, a subsequent report by the same organization entitled "Togo: Time for Accountability" (AI: AFR 57/22/99/F, 20 July 1999) and a confidential document entitled "Togo: rappel de l'exposé oral fait par la delegation d'Amnesty International devant la Commission d'enquête internationale sur le Togo, le vendredi 22 septembre 2000 à Genève" ("Togo: Statement delivered by the Amnesty International delegation before the International Commission of Inquiry for Togo, Friday, 22 September 2000 in Geneva") (AI: AFR 57/13/00/F, October 2000);

(c) Report (briefing) on the inquiry conducted by the Ministry of Defence of Benin (Department of Protection, Security and Defence), prepared in July 2000.

31. The Commission also consulted numerous articles from the press, including one from the Togolese newspaper l'Aurore, dated 18 August 2000, and one from the French daily Le Figaro, dated 1 July 1999.

2. On-site visits

32. As stated earlier, the Amnesty International report refers to hundreds of bodies found at sea and on the beaches of Togo and Benin, several of which had allegedly been buried by local fishermen and villagers. To verify those allegations, the Commission conducted on-site visits to the sites concerned, as follows:

(a) Lomé, from 13 to 18 November 2000 and 4 to 12 December 2000;

(b) Cotonou, Benin, from 19 to 23 November 2000;

(c) Grand-Popo, Agoué and Ouidah, Benin, from 24 November to 2 December 2000.

The Commission visited several communities referred to in the allegations. These included the villages of Ayi-Guinnou and Avlo (25 November), Agonnêkamé (26 November), Zogbedji-Plage (27 November) Agoué (28 November) and Ayido-Plage (30 November). On those occasions it heard nearly 30 fishermen in all and visited a few graves located directly on the beaches;

(d) Agbozume, Ghana, in the Volta region on the Togolese border, from 2 to 4 December 2000; and

(e) The Togolese communities of Afagnan (6 December 2000), Dokpohoé, in the cantons of Sandomé (7 December 2000), Sokodé and Kara-Sud (9 December 2000).

33. These visits were supplemented by consultation of the registers (police diaries) of several gendarmerie brigades with territorial competence to register accidental deaths (drownings, traffic accidents, hunting accidents, etc.) occurring in these communities. The Commission was given access to the registers of the brigades of Grand-Popo (27 November 2000) and Agoué (28 November 2000). Lacking prior authorization from the Public Prosecutor, the Deputy Commander of the Ouidah brigade did not allow the Commission to consult its register.

34. As Amnesty International's allegations also referred to the use of aircraft, including a Buffalo aircraft, to dump bodies at sea, the Commission travelled to the Lomé-Tonkoin military airport on 17 November 2000, to visit the military aircraft there and requested and obtained technical information on their functioning. The information concerned the aircraft's operational features, in particular their possibilities of dumping bodies in flight. To supplement this information, the Commission also travelled to the premises of the Agency for Air Navigation Safety in Africa and Madagascar (ASECNA), in Lomé, on 11 December 2000, where it obtained information concerning flights, including local flights, made by civil and military aircraft from the Lomé-Tonkoin airport from 1 January to 31 December 1998. This information concerns the aircrafts' take-off and landing times.

3. Testimony

35. The Commission collected more than 1,000 accounts in all. These accounts may be divided into two categories. The first consists of testimony from persons who state that they have seen or buried corpses washed up by the sea, in Benin. These eyewitnesses are basically fishermen and other villagers living in the communities located along the adjacent sea coasts of Togo and Benin, from Grand-Popo to Ouidah. The second category of testimony consists of statements and opinions from persons with knowledge of the allegations. This category includes diplomats, governmental, prefectoral and communal leaders, representatives of specialized agencies of the United Nations system, journalists, teachers, human rights activists, political activists and any other persons who spoke with the Commission either spontaneously or at its request.

B. Attempts to bribe witnesses in Benin

36. During its inquiries around Benin, especially in the sub-prefectures of Grand-Popo and Agoué, the Commission was confronted with manoeuvres aimed at intimidating and bribing the fishermen whom it wished to question. To be sure, this was apparently not the first attempt by the Togolese authorities to cover up the tracks. The documentary sources which the Commission had to study for 1999 and the testimony in this connection suggest that the Government of Togo had already tried earlier to bribe Beninese journalists and Beninese citizens living in the areas where the bodies had been washed up. Similar incidents had been observed previously in June 1999 - testimony of district heads and some of the people living in Beninese localities bordering on Togo - and had led in particular to a protest march by the people of Grand-Popo.

1. Testimony of district heads and other Beninese nationals to the Togolese press

37. Following the publication of the Amnesty International report in May 1999, some Grand-Popo (Benin) district heads and other natives of the same region appeared on Togolese television to refute the claims of the "discovery of dead bodies" out at sea and on some beaches in Benin. On Saturday, 22 May 1999, four district heads of Grand-Popo commune went to Lomé, without the knowledge of the local administrative authorities and of the people they were supposed to represent, to testify on Togolese television and radio that they had never seen bodies washed up on the beaches. The same sources report that these district heads were received by President Eyadéma and were paid by him for their testimony. When they made their statements on Togolese television, these district heads and the other persons concerned appeared in traditional costumes normally worn by the Popo community for their main festivals, especially at Whitsun, during reunions of the members of NONVICHA (an association founded in 1923, representing all the Popos from Benin and abroad). Their testimony reportedly caused consternation in the Popo community and profound indignation among its leaders and prominent figures, who summoned the persons concerned in order to question them and reprimand them publicly. Popular discontent was furthermore expressed in a protest march organized at

Grand-Popo on 9 June 1999. This march ended with the handing in of a petition to the sub-prefect which soundly condemned these actions and called for the dismissal of the district heads concerned. Four of the district heads were, in fact, suspended by the sub-prefect for having gone to Togo without higher authorization.

38. When asked whether these district heads and other persons were censured for having testified in Togo with the symbols of the Popo community or for having lied, the prominent figures and witnesses questioned gave both reasons.

2. The media

39. In 1999, after the publication of the report of the Beninese Human Rights League on the affair of the "Togolese bodies" (a report that confirmed the discovery of Togolese bodies, which it estimated as numbering about 100), the Togolese authorities reportedly approached some Beninese journalists and asked them to deny the League's information subject to remuneration. These attempts to bribe Beninese journalists to discredit the report of the Beninese Human Rights League apparently failed and were unmasked by the Beninese newspaper Le Progrès, in its issue 277 of 27 July 1999, in an article entitled "Eyadéma wants to bribe the Beninese press". Benin's Observatory for Good Practice and Ethics in the Media (ODEM) looked into the case and took sanctions against the journalists implicated in this affair.

3. The fishermen

40. Some fishermen likely to give evidence to the Commission were approached by Mr. Philippe Adahoumehé, an agronomist working for an NGO based in Comé, Benin, who dissuaded them - by bribery (money) or threats - from cooperating with the Commission. Some witnesses admitted to the Commission that they had received sums of money amounting to CFAF 3,000 not to give evidence and others, who had declined the offer, were threatened. Mr. Adahoumehé reportedly told them: "Be careful, your names are already in the office of the President of the Republic", by which he meant "the President of the Republic of Benin". On Saturday, 25 November 2000, the Commission went to the village of Ayi-Guinnou, where it was to hear testimony from a group of fishermen. Some witnesses revealed at this meeting that, two days before the Commission's arrival, Mr. Adahoumehé had given the fishermen money to deny having seen any dead bodies. Among the fishermen questioned, one witness admitted having received money from Mr. Adahoumehé, but affirmed that this had not prevented him from telling the truth about what he had seen.

41. The Commission informed the Grand-Popo sub-prefect about the actions of this individual, wondering also for whom and at whose prompting he was acting. The sub-prefect told the Commission that he had summoned and questioned him, but the man had denied that his actions were in any way related to the Commission's inquiry. He stated that the handing out of the money was part of his work of supervising a group of fishermen. The Commission is not satisfied with this answer. Indeed, it noted an increasing lack of cooperation on the part of the people whom it had arranged to meet and who had promised to cooperate. Most of those not yet questioned had withdrawn their earlier offers to cooperate with the Commission. The Commission also observed that its movements in the villages of this area were preceded or

followed by visits from Mr. Adahoumehé. The Commission requested the Beninese authorities to provide for the safety of the people who had cooperated with it in this area, especially those who had received threats from Mr. Adahoumehé, and stated that it would hold him responsible for any incident that might occur after the mission.

IV. ALLEGATIONS OF EXTRAJUDICIAL EXECUTIONS IN 1998

42. The Amnesty International report of 5 May 1999 (see para. 13) alleges, inter alia, on page 26 that some bodies were found on the beaches of Togo and Benin and that others were seen at sea off the coast of Benin for at least four days. The Togolese Government has itself published a white paper (see para. 15) rejecting these allegations. Since these allegations concerned the beaches of Benin, the Commission went to that country, in particular visiting the sub-prefectures of Grand-Popo, which borders on Togo, and Ouidah. It stayed there from 24 November to 2 December 2000. The members of the Commission visited numerous fishing villages extending along the shores of the ocean up to the Togolese border to the west.

43. In addition to the fishermen, the Commission also heard the accounts of Beninese officials and other persons.

44. These many witness accounts, while gathered from different places, agree on the following points.

A. Allegations concerning the discovery of bodies on the "high seas" and bodies recovered and buried by fishermen

45. The Commission went to the Togolese and Beninese beaches concerned. Around these beaches, there are fishermen organized in villages and engaged in small-scale fishing. Some villages have existed for more than a century. The communities living in these villages generally speak the same language and have relatives on both sides of the Benin-Togo border. Some Ghanaian nationals are also to be found in these villages. These communities all seem to live in harmony. Some Togolese refugees share the fate of their Beninese "brothers". Many have returned home, while others have settled in Benin.

46. In general, the Commission's arrival was welcomed and a willingness to cooperate was perceptible, although fear of reprisals in some cases did not allow everyone wishing to cooperate with the Commission to do so.

47. Several graves where the fishermen had reportedly buried some of the dead bodies found were shown to the Commission. The Commission was unable to exhume the bodies owing to a lack of human and scientific resources.

1. Bodies discovered on the "high seas"

48. It should be made clear that the term "high seas" is used by the fishermen to mean an offshore area between 10 and 20 km from the coast. It does not correspond to the term "high seas" as defined by the United Nations Convention on the Law of the Sea concluded on 10 December 1982.

49. The many witness statements gathered are concordant: during part of 1998, several fishermen reportedly saw a large number of dead bodies floating while they were fishing on the "high seas". On discovering these bodies, some fishermen took fright and for a while reportedly stopped going out to fish or avoided going onto the "high seas" and simply kept close to the shore. It would appear from the descriptions given that some bodies were found almost naked, and others clothed, most of them being in an advanced state of decomposition. The discovery of these dead bodies at the time became a subject of conversation and a cause for concern throughout the area.

50. When the Commission raised the problem of the number of dead bodies, however, the estimates given by the fishermen differed. When asked by the Commission, "Approximately how many bodies did you see?", some answered "many", others estimated that they had seen about 60 bodies, and still others spoke of 100 or 150 bodies. No group of fishermen (whose boats carry 7 to 15) apparently had the courage or presence of mind to make an actual count of the floating bodies. The first reaction of the fishermen on seeing this frightening spectacle was reportedly to leave the area and make their way back to their villages.

51. The discovery of dead bodies on the "high seas" seems to be corroborated by concordant testimony. However, it would be risky for the Commission to put forward any figure to determine the exact number. Furthermore, concerning the allegations of the use of aircraft to dump bodies at sea, the Commission is unable, with the information currently in its possession, either to confirm or to dismiss such claims.

2. Bodies recovered and buried by fishermen

52. The Commission gathered numerous concordant and consistent witness accounts about the unusually large number of unknown bodies said to have been recovered on the coast and buried by fishermen during the period of 1998 in question. The fishermen took the Commission to the various sites where these bodies had reportedly been buried. According to their accounts, at least two bodies were found with no heads. When asked whether the heads might have been eaten by fish, the fishermen stated categorically that the fish do not eat heads but only bite at arms and legs.

53. Some of the fishermen who regularly informed the local gendarmerie whenever they found a dead body apparently quickly tired of doing so. The gendarmerie would make a charge of CFAF 3,000 to 5,000 each time they were called out. Moreover, frequent summonses to the gendarmerie station are said to have deterred the fishermen from informing the authorities and they reportedly opted to bury the bodies in a hurry and secretly or else quite simply pushed them a little further out to sea so that they would wash up elsewhere.

54. For greater certainty, the Commission asked the fishermen whether the bodies were not those of inhabitants from neighbouring areas, i.e. Beninese. The fishermen were almost unanimous in saying that when there is a natural drowning or a fishing boat capsizes, the coastal dwellers from Togo to Benin alert one another, and the families concerned come and pick up the

bodies. In conclusion, according to the fishermen, the dead bodies found were not victims of natural drowning or the capsizing of a fishing boat. Since the bodies had been carried from west to east by the sea current, they could have come, according to these fishermen, only from Togo, which is situated geographically to the west of Benin.

B. Allegations of extrajudicial executions in the provinces of Togo

55. The Commission gathered numerous witness accounts relating to allegations of extrajudicial executions perpetrated inside Togo. Two cases of executions were, for example, reported to the Commission at Kara-Sud. Mr. Palanga N'Gamnouwe Germain, a chief forest warden, was allegedly summoned, with no apparent reason, on 24 April 1998 to the Kara gendarmerie station, where he is said to have been arrested and tortured severely for three days; he reportedly died there on 27 April. His arrest was allegedly due to remarks he had made to the gendarmes about the way in which they had parked a private vehicle on a bridge with the doors open. During the same period, Kéléou Pélé, arrested for death threats against his older brother by the Kara gendarmerie, reportedly died after three days of detention following the torture allegedly inflicted upon him.

56. The Commission presents below two summary tables listing the cases brought to its attention:

Table 1

Alleged victims of extrajudicial execution

Name	Date and place of birth or age	Occupation	Last known address	Date of death	Place of death
POMEAVOR Hoffia Messan	1968	Lottery ticket seller	Akato Avoemé (Lomé commune)	March 1998	Akato
TEKO ALLYN Anani	24.12.1957	Unskilled labourer	OTP-Kpeme (Togo)	November 1998	Reportedly killed outside his home
AMOUZOU Koffi	27 years		Aflao (Ketu district), Ghana	June 1998	Azaou
AHIAKPO Koffi Roger	30 years		Aflao (Ketu district), Ghana	June 1998	Azaou
KOSSI Kossi	25 years	Apprentice tailor	Afagnan	26.6.1998	Afagnan

Name	Date and place of birth or age	Occupation	Last known address	Date of death	Place of death
KEKGBÉ Koffi Mathieu		Photographer	Dokpohoé village	28.9.1998	Killed and disembowelled at his home
PALANGA N'GAMNOUWE Germain	31.7.1963, Lomé	Deputy forest warden	Kara, Chaminade district	27.4.1998	Died following torture at Kara gendarmerie station
KÉLÉOU Pélé	32 years		Kara	April 1998	Died following torture at Kara gendarmerie station

Table 2

Alleged deaths resulting from torture and ill-treatment in detention centres

Name	Date and place of birth or age	Occupation	Last known address	Date of death	Place of death
AHADJI Kodjo	35 years	Builder	Civil prison, Lomé	December 1998	Lomé
TENOU Koffi	65 years	Salesman	Civil prison, Lomé	June 1998	Lomé

C. Allegations of enforced disappearances

57. The Commission's visit to Ghana, close to the Togolese border, from 2 to 4 December 2000, enabled it to meet the next of kin of persons reported missing and/or summarily executed. During the various disturbances and clashes between the political opposition and the Government which Togo has witnessed in the 1990s, many opposition party members have sought refuge in neighbouring countries, including Ghana. For the most part, these refugees are young. Many of them have apparently interrupted their high school studies; they have no occupational training and no resources to fall back on. Some of them, in order to survive, are obliged to cross the border between Ghana and Togo in order to obtain small amounts of money and food from their families.

58. According to witness reports, young refugees have apparently been detained by the security forces when entering or leaving Togo. These arrests take the form of abductions by plain-clothes members of the security forces who use unmarked vehicles or vehicles without number plates. They generally operate under the command of Captain Yark.

59. Many people are afraid to try to discover the whereabouts of their relatives. Others have tried and have reportedly visited gendarmerie and police stations, to no avail. Many relatives have given up all hope of finding their kin alive once they have been arrested by the security forces.

60. The Commission has identified eight disappearances that took place in 1998. But it should be remembered that fear of reprisals has dissuaded many relatives from testifying.

Table 3

Missing persons

Name	Date and place of birth, age and origin	Occupation	Last known address	Date of arrest	Comments
AKAKPOSSA Koffi "Hitler"	1970, Lomé	Welder	Sanzulé refugee camp	22.12.1998	Not seen since arrest
ASSIONGBON Nicolas	1968, Lomé	Dressmaker	Avoemé - Lokotomey V/R, Ghana	October 1998	Not seen since arrest
DJIEWONE Adrisse "Ringo"	1970	Car parts salesman	Sikakope Denu, Ghana	10.8.1998	Not seen since arrest
EDOH Komlan	1980, Akato	Student	CEG Sanguera - Lomé	20.8.1998	Not seen since arrest
KOUNI Kodjo	1976, Akato	Painter	Akato Avoemé	20.8.1998	Not seen since arrest
HOMAWOO Yao	24 years	Forwarding agent	Gbenyedji district	8.2.1998	Not seen since arrest
AKAKPO Kokou	39 years, Lomé	Driver	Aflao - V/R - Ghana	7.2.1998	Not seen since arrest
SENYO Eugène	47 years, Paline	Driver	Ghana	7.2.1998	Arrested while travelling to Togo

61. As in the case of the alleged extrajudicial executions in the provinces, the Commission forwarded the list of arrested and missing persons to the Togolese authorities in a letter dated 12 December 2000 with a view to eliciting fuller information about the whereabouts of the individuals in question. As of the adoption of this report, no reply has been received.

V. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

62. The Commission began inquiries at its first meeting in Geneva, and completed them with its five-week field mission. The various avenues of inquiry pursued by the Commission have enabled it to draw the following conclusions.

63. The Commission is convinced that allegations of extrajudicial executions in Togo should be given due consideration. In the main, those singled out for execution have been members of opposition parties, but in some cases persons arrested for offences under ordinary law have also been executed. As to the perpetrators, various accounts seem to indicate that they are individuals associated with the security forces, the gendarmerie and the militias that operate in tandem with the authorities. In addition to extrajudicial, summary and arbitrary executions, these elements have engaged in torture and ill-treatment of detainees, and the rape and abduction of women in certain areas.

64. Moreover, armed militiamen closely linked to the authorities and often operating in groups, who reportedly enjoy the support and encouragement of the current Prime Minister, Mr. Agbeyomé Kodjo, are said to rape rural women in the presence of their husbands. They also abduct women and hand them over to other men for payment. In the course of these night-time raids, the militiamen also rob their victims.

65. Although they have been apprised of these allegations, the gendarmerie and the local authorities have been unable to put a stop to the crimes. Exasperated by this situation, rural people reported these incidents to the Ligue Togolaise des Droits de l'Homme (Togolese League for Human Rights, LTDH). Thus, approximately 12 women aged between 12 and 40 are reported to have been raped in Yoto Prefecture. No judicial proceedings have been set in motion as a result of the victims' complaints.

66. Regarding establishment of responsibilities, the Commission is of the opinion that a judicial inquiry at the national level is the only means of identifying the individuals responsible for these human rights violations.

67. Regarding allegations that bodies have been discovered by fisherman on the "high seas", the Commission has already stated that a number of accounts appear to substantiate these reports. However, the divergent estimates of the number of bodies seen by fishermen do not permit the Commission either to confirm or to deny an exact number. Nor can it confirm or deny, on the basis of the information currently available, allegations that aircraft have been used to dump bodies on the "high seas".

68. Nevertheless, the above-mentioned facts point to the existence of a systematic pattern of human rights violations in Togo in the course of 1998. Accordingly, the Commission wishes to submit the following recommendations.

B. Recommendations

69. Effective implementation of the Commission's recommendations should contribute to the establishment of an environment in Togo favourable to respect for human rights, the elucidation of the facts which this inquiry seeks to achieve, and the identification and possible prosecution of the alleged perpetrators of these violations, especially those involving extrajudicial executions. These recommendations are addressed, respectively, to the Secretaries-General of the United Nations and the Organization of African Unity, to the international community, to the Commission on Human Rights and the African Commission on Human and Peoples' Rights and to the Government of Togo.

1. To the Secretaries-General of the United Nations and the Organization of African Unity

70. The Commission strongly recommends the publication of this report.

71. The Commission also recommends the appointment of another team of experts to be entrusted with the task of verifying the technical data concerning the operation of aircraft used by the Togolese armed forces, the computerized records of flights at the Lomé-Tonkoin airport throughout 1998, and the trajectories of the bodies in the territorial sea adjacent to the coasts of Togo and Benin.

72. The Commission would have liked to have more time and facilities to elucidate most of the facts related to its inquiry. As this was not possible, it recommends that the two Secretaries-General should appoint a team of forensic scientists to exhume and examine bodies reportedly buried in Togo and Benin. This expert appraisal should help to determine the identity of the victims and the causes of their deaths.

2. To the international community

73. Bearing in mind its concerns with regard to the protection of the witnesses who have cooperated in its inquiries, the Commission recommends that the States Members of the United Nations and the relevant international organizations should provide their financial support to the Office of the High Commissioner for Human Rights with a view to enabling it to implement a mechanism of regular follow-up of the situation of these witnesses.

3. To the Commission on Human Rights and the African Commission on Human and Peoples' Rights

74. The Commission recommends the appointment of a special rapporteur on the situation of human rights in Togo. The Commission is convinced that the creation of such a mandate would

allow for the development of closer cooperation between the Commission on Human Rights and the Togolese authorities and Togolese civil society with a view to better protection of human rights in Togo.

75. The Commission furthermore suggests that the Special Rapporteurs of the Commission on Human Rights and the African Commission on Human and Peoples' Rights concerned, respectively, with extrajudicial, summary and arbitrary executions, torture and violence against women should make periodic visits to Togo. The Commission is convinced that such visits and the resulting mission reports would enable the Government of Togo and Togolese civil society to prevent similar violations from being perpetrated in the future.

4. To the Government of Togo

76. The Commission recommends that a criminal inquiry should be commenced as soon as possible through the establishment of a special team of judges entrusted not only with elucidating the various allegations of extrajudicial executions, enforced disappearances and other violations mentioned in this report and in other documents, but also with prosecuting and punishing, as appropriate, the perpetrators of these violations. Should such an initiative be undertaken, the Commission would appreciate the Government informing the United Nations and the Organization of African Unity about the results of these actions.

77. The Commission furthermore recommends that the Government of Togo should adopt legislative and other measures to punish and prevent the perpetration of such violations, in conformity inter alia with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

Annex 1

STATEMENT DELIVERED ON 20 AUGUST 1999 BY THE CHAIRPERSON OF THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Situation of human rights in Togo

Concerned by the allegations that several hundred people were victims of extrajudicial executions in Togo in 1998, the Sub-Commission has taken note of the controversy which has arisen as to whether or not, or the extent to which, these allegations are true,

Considering that, on account of this controversy, it was urgent that an appropriate and effective investigation should be undertaken in accordance with international norms and in an impartial and independent manner, with a view to establishing the truth,

Following the constructive discussions which the Togolese delegation has had with, inter alia, the Office of the High Commissioner for Human Rights and members of the Sub-Commission,

The Sub-Commission:

(a) Welcomes with satisfaction the initiative of the Government of Togo to set up an international commission of inquiry in accordance with international norms;

(b) Also welcomes favourably the proposal of the Government of Togo to request the Secretary-General of the United Nations and the Secretary-General of the Organization of African Unity to set up the commission of inquiry in accordance with international norms;

(c) Takes note of the willingness of the Government of Togo to ask the Secretary-General of the United Nations and the Secretary-General of the Organization of African Unity to provide, as required, the assistance necessary for the proper functioning of the international commission of inquiry;

In addition, taking account of the observations of the Sub-Commission, the Government of Togo has undertaken to:

(a) Provide the international commission of inquiry with support and assistance so that it can accomplish its task with competence in accordance with international norms, and within a reasonable time;

(b) Take all appropriate measures to ensure that the competent authorities cooperate fully with the international commission of inquiry.

The Sub-Commission requests the Secretary-General of the United Nations and the Secretary-General of the Organization of African Unity to report to it at its next session on the results of the efforts made in the framework of the present statement.

Annex 2

International Commission of Inquiry for Togo

RULES OF PROCEDURE

Adopted at Geneva on 4 August 2000

Article 1. Mandate

The Commission shall collect, examine and analyse all information relevant to the allegations that hundreds of people were victims of extrajudicial executions in Togo in 1998 with a view to establishing the truth. The Commission shall take into account the context, modalities and impact of those events. The work of the Commission shall be conducted in an impartial and independent manner in accordance with international norms.

Article 2. Solemn declaration

1. The members of the Commission shall be required to make the following solemn declaration:

> "I solemnly undertake to perform my duties and exercise my powers as a member of the Commission independently, honourably, faithfully, impartially and conscientiously."

2. The members of the Commission secretariat shall be required to make the following written declaration:

> "I solemnly declare and promise to exercise in all loyalty, discretion and conscience the functions entrusted to me as a staff member of the International Commission of Inquiry for Togo and to respect and safeguard the confidentiality of all sensitive information, including the sources, provided to the Commission during the course of its investigations."

Article 3. Privileges and immunities

The Commission, including all members of the Commission, shall enjoy all forms of protection accorded by the Convention on the Privileges and Immunities of the United Nations.

Article 4. International norms

The inquiry shall be conducted in accordance with relevant international norms, including the international human rights instruments currently in force and, in particular, the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, the Guidelines for the Conduct of United Nations Inquiries into Allegations of Massacres and the Declaration on the Protection of All Persons from Enforced Disappearances.

The Commission shall also be guided by other relevant materials, including the draft Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and guiding principles 5 to 12 relating to the establishment of extrajudicial commissions of inquiry (E/CN.4/Sub.2/1997/20/Rev.1, annex II), adopted by the Sub-Commission on the Promotion and Protection of Human Rights at its forty-ninth session.

Article 5. Methods of inquiry

In order to fulfil its mandate, the Commission shall:

(a) Receive from governmental and non-governmental sources information, documentation and all other material relevant to establishing the truth;

(b) Request information, documentation and all other material relevant to establishing the truth from Governments, including from the Government of Togo, the United Nations and the Organization of African Unity, civil society organizations, including political parties, the press and individuals;

(c) Undertake fact-finding missions in any part of Togo or other cooperating countries, including on-site visits with unrestricted access and unhindered interviews, in order to obtain additional information, collect evidence, record testimonies and verify facts;

(d) Interview victims, witnesses and other persons allegedly involved in violations of human rights, including persons accused, or against whom there is evidence, of involvement in human rights violations;

(e) Solicit the cooperation of any expert or knowledgeable person who may be able to assist the Commission in the fulfilment of its mandate;

(f) Compile, analyse and verify information and all relevant materials received through the above-mentioned methods and sources.

Article 6. Confidentiality of information and protection of witnesses

1. The Commission shall ensure that individuals and their families are protected from threats or retaliation of any kind for cooperating with the Commission. To this end, the Commission shall adopt procedures and methods of work aimed at protecting such persons during all stages of the inquiry as well as thereafter.

2. Members of the Commission and members of the secretariat shall exercise discretion. They shall refrain from taking a stand in public on any issue or confidential question under discussion in the Commission. The Chairman shall make information on the work of the Commission available to the public to the extent that the Commission deems it appropriate.

3. All written materials and records of the Commission, as well as other material evidence gathered by it during the inquiry, shall constitute the property and archives of the United Nations and shall enjoy the treatment granted to such property and archives under the Convention on the Privileges and Immunities of the United Nations.

Article 7. Cooperation with the United Nations, the Organization of African Unity and the Government of Togo

The Commission shall endeavour to establish cooperation with the United Nations, the Organization of African Unity and the Government of Togo based on the following commitments:

(a) At the request of the Commission, the United Nations and the Organization of African Unity shall provide the assistance necessary for the proper functioning of the Commission;

(b) At the request of the Commission, the Government of Togo shall provide the Commission with support and assistance so that it can accomplish its task with competence and within a reasonable time; it shall take all appropriate measures to ensure that the competent authorities cooperate fully with the Commission. At the request of the Commission, appropriate security arrangements shall be undertaken to protect the Commission's personnel, premises, documents and materials. The Government of Togo shall guarantee in particular, freedom of movement, freedom of access to all sources of information and unhindered contacts with government authorities, civil society organizations and individuals.

Article 8. Meetings, powers of the Chairman and decisions

1. The Commission shall hold its meetings in private. It may, however, hold public meetings when it is deemed necessary for the effectiveness of its work.

2. The Chairman shall declare the opening and closure of each meeting of the Commission, direct the discussions, accord the right to speak, put questions to the vote, announce decisions, rule on points of order and exercise control over all proceedings.

3. The Chairman shall be the spokesperson for the Commission and shall represent the Commission in its external contacts. He may delegate his powers in cases where he is unable to exercise them.

4. The Commission shall take its decisions by consensus. In the absence of a consensus, decisions of the Commission shall be taken by a majority of two of the three members.

Article 9. Secretariat

The secretariat of the Commission shall be responsible for taking all necessary measures to ensure that the work of the Commission, including its meetings, is carried out effectively. The secretariat shall ensure the collection, preparation and distribution of documents and materials to the members of the Commission as requested by the Commission, its Chairman or any member thereof. It shall be responsible for the preparation of the records of the proceedings of the Commission.

Article 10. Report

1. The Commission may designate a rapporteur on any topic of a general or specific nature.

2. The Commission shall report its findings, conclusions and recommendations to the Secretaries-General of the United Nations and the Organization of African Unity.